

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILLIP FERGUSON, et al.,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
JUSTICE, et al.,

Defendants.

Case No. [16-cv-06627-HSG](#)

**ORDER DISMISSING WITH
PREJUDICE THE FIFTH CAUSE OF
ACTION AGAINST THE AGENTS AND
REMANDING THE OTHER CAUSES
OF ACTION AGAINST THE AGENTS**

This action was initially filed in state court on April 20, 2016, and the first amended complaint was filed on October 3, 2016. Dkt. No. 1 ¶ 1 & Ex. A (“FAC”). Plaintiffs are twenty patients who received medical treatment from the Bay Area Consortium for Quality Healthcare. FAC ¶ 1. The case was removed to federal court on November 15, 2016, on the basis of federal question jurisdiction. Dkt. No. 1 ¶ 4. Two motions to dismiss the FAC were subsequently filed. The first was filed by the State of California by and through the California Department of Justice (collectively, “State Defendants”). Dkt. No. 4. The second was filed by six special agents employed by the California DOJ: Danielle Morrow, Bill Salsberg, Holly Swartz, Catarina Le, Donny Fong, and Brad Minton (collectively, “Agents”). Dkt. No. 7.

On July 4, 2017, the Court granted Defendants’ motions to dismiss, ruling as follows as to the particular causes of action:

The Fifth Cause of Action against the State Defendants is **DISMISSED** with prejudice. The remaining causes of action asserted against the State Defendants are **DISMISSED** without leave to amend. In addition, the Court **GRANTS** the Agents’ motion to dismiss as to the cause of action under 42 U.S.C. § 1983, but does not reach the merits of the causes of action under California law. The Fifth Cause of Action asserted against the Agents is **DISMISSED** with leave to amend.

Dkt. No. 26 at 10. The Court ordered Plaintiffs to file any amended complaint within 28 days of


1 the dismissal order. *Id.* at 11. Plaintiffs did not do so.

2 On August 8, 2017, the Court issued an order to show cause. Dkt. No. 27. In light of the
3 dismissal of Plaintiffs' sole federal cause of action against the Agents and Plaintiffs' failure to file
4 an amended complaint, the Court stated that it did not intend to exercise supplemental jurisdiction
5 over the state law claims against the Agents. *Id.* at 2. The Court ordered Plaintiffs to "show cause
6 why the Court should not take the following actions as to the causes of action pled against the
7 Agents: (1) dismiss the Fifth Cause of Action with prejudice, in light of Plaintiffs' failure to
8 amend; and (2) remand all the remaining causes of action, which are pled under California law, to
9 the Superior Court of California, Alameda County." *Id.* Plaintiffs filed a response on August 15,
10 2017, stating no objection. Dkt. No. 28.

11 Accordingly, the Fifth Cause of Action against the Agents is **DISMISSED WITH**
12 **PREJUDICE** for failure to amend. For the reasons detailed in its OSC, the Court declines to
13 exercise supplemental jurisdiction over the remaining causes of action against the Agents, which
14 are therefore **REMANDED** to the Superior Court of California, County of Alameda. The Clerk is
15 directed to enter judgment in favor of the State Defendants as to all causes of action and in favor
16 of the Agents as to the Fifth Cause of Action. The Clerk shall remand the case forthwith and close
17 the case.

18 **IT IS SO ORDERED.**

19 Dated: 8/17/2017

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21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge
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